



# Title IX Board of Governors Training

Jackson Preparatory & Early College

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November 27, 2023

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# What is Title IX of the Education Amendments of 1972?

No **person** in the United States shall, **on the basis of sex**, be excluded from participation, or denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681, *et seq.*



# Title IX's Protections

## Protects ALL students



- Elementary → High School
- Male + female + straight + gay + lesbian + bisexual + transgender + questioning students
- Gender Identity claims/LGTBQ Students
  - Failure to conform to stereotypical notions of “masculinity” or “femininity”
- “Same sex” discrimination claims must be handled with same procedures as opposite sex claims

# Title IX is More Than Athletics

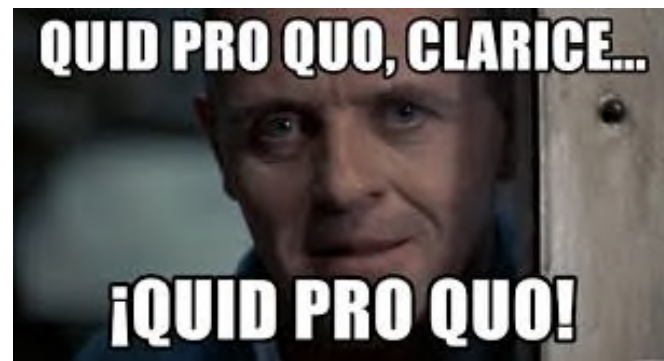
**Title IX protects students in all Education Programs and Activities:**

- Academics and Education
- Extracurricular and Athletic Programs
- Other programs or activities of the school:
  - in a school's facilities;
  - in classrooms (including virtual);
  - on school transportation; and
  - at an activity or program sponsored by the school at another location or where the school has substantial control over the students (i.e., field trips, sporting events)



## 2020 Final Rule Definition of Sexual Harassment

- "Quid Pro Quo" harassment by a school employee.
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person equal access to the school's education program or activity.
- "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under other Federal laws called the Cleary Act and the Violence Against Women Act (rape, sodomy, fondling, criminal sexual assault, incest).



# Is It Title IX Sexual Harassment?

## *Doe v. Plymouth-Canton Community Schools (2022)*

- **SEVERE:**
  - “Severe” means something more than just juvenile behavior that is antagonistic, non-consensual, and crass.... “simple acts of teasing and name-calling” are not enough, “even where these comments target differences in gender.”
- **PERVASIVE**
  - “Pervasive” means “systematic” or “widespread,” ... one incident of harassment is not enough.
- **OBJECTIVELY OFFENSIVE**
  - “Objectively offensive” means behavior that would be offensive to a reasonable person under the circumstances, not merely offensive to the victim, personally or subjectively. The victim’s perceptions are not determinative.



# If Not Title IX, Is it Sexual Harassment?

## STATE LAW = ELLIOT-LARSEN CIVIL RIGHTS ACT

"Sexual harassment" is defined under Michigan law as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

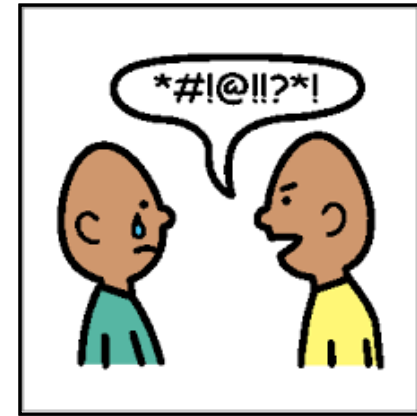
- Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment, or status in a class, educational program, or activity;
- Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual;
- Such conduct has the purpose or effect of **interfering** with the individual's work or educational performance; of creating an intimidating, hostile, **or** offensive working, and/or learning environment; or of **interfering** with one's ability to participate in or benefit from a class or an educational program or activity.

Board Policy: Anti-Harassment vs. Title IX Sexual Harassment



# If Not Sexual Harassment, What Is It?

- **Bullying/Cyberbullying?**
- **Other discrimination/harassment?**
- **Student Code of Conduct Offenses?**
  - Inappropriate Displays of Affection
  - Undesirable Physical Conduct
  - Sexual Misconduct
  - Profanity/Obscenity
  - Inappropriate Conduct/Communication (Teasing/Disorderly Conduct)
  - Acceptable Use Violation/Technology Abuse



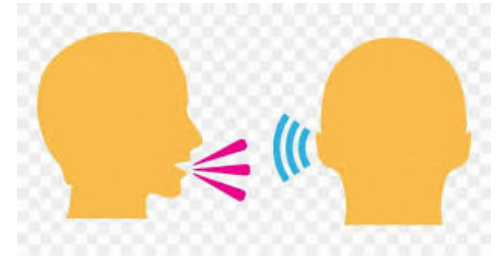


# When Does a School Have Notice?

- Once a school has actual knowledge of sexual harassment or allegations of sexual harassment, the school has to respond and take action.
- A school has actual knowledge when the school has notice that a person may have been victimized by sexual harassment.
- Any person, whether the alleged victim or a parent, friend, or bystander, has the right to report sexual harassment to put the school on notice.
- And sometimes school personnel will personally witness sexual harassment.



# Actual Knowledge and School Personnel



- Board Members
- Title IX Coordinator(s)
- Other people within the school who have authority to institute corrective measures. This could vary from school to school, but always includes the Title IX Coordinator(s).
- In elementary and secondary schools, telling any school employee always puts the school on notice.

# Current Title IX Policy and Procedure Requirements (2266)



# Written Grievance Procedures

- Schools must have a written grievance procedure for dealing with sexual harassment which must abide by the new regulations
- The grievance procedures themselves can't discriminate on the basis of sex, and any additional provisions that a school adds must apply equally to complainants and respondents
- Written grievance procedures need to include 10 specific items



## Requirement 1: Treat Parties Equitably

- The school's grievance process must treat complainants and respondents equitably by providing remedies to a complainant if a respondent is found responsible, and by following the prescribed grievance process imposing discipline on a respondent.
- The remedies for a complainant have to be designed to restore or preserve equal access to the school's education program or activity.
- Parties have a right to an “advisor” throughout the Grievance Procedure (can be an attorney or 3<sup>rd</sup> party)



## Requirement 2: Objective Evaluation of Evidence

- The school's grievance process must ensure an objective evaluation of all relevant evidence – including inculpatory and exculpatory evidence.
- Credibility determinations can't be made on the basis of a person's status as a complainant, respondent, or witness.



## Requirement 3: Training; No Conflicts of Interest

- The individuals involved in the process – Title IX Coordinator, investigators, decision-makers, appeal or facilitators of informal, voluntary resolution efforts – must not have any bias or conflict of interest.
- These individuals must also be trained. The materials used to train Title IX personnel can't rely on sex stereotypes, must promote impartial investigations and adjudications, and must be posted on each school's website (and if a school does not maintain a website, make them available for public inspection upon request).
- Investigator cannot be decision-maker. Decision-maker cannot be investigator or Title IX Coordinator. Appellate person/body cannot be anyone involved previously.

## Requirement 4: Presumption of Innocence

- Under the school's grievance procedures, the respondent must be presumed not responsible, so that any finding of responsibility only comes at the conclusion of a grievance process.





## Requirement 5: Reasonably Prompt Timeframes

- The grievance process must include reasonably prompt timeframes for resolving formal complaints of sexual harassment.
  - Prior OCR guidance 60 days = most Board Policies
- Temporary delays are permitted only for good cause. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisor of choice, or the need to provide language assistance or accommodation of disabilities.



## Requirement 6: Description of Range of Outcomes

- The grievance process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility.



# Range of Outcomes?

- **Possible disciplinary sanctions:**

- Suspension up to and including permanent expulsion
- Discipline up to and including termination



- **Possible remedies:**

- AKA: Remedial Measures
  - No Contact Order (for both parties)
  - Change in classroom, lunchroom, bus, locker assignment
  - Restorative Justice, if applicable
  - Job Transfer/Reassignment
  - Supportive measures to be continued after investigation



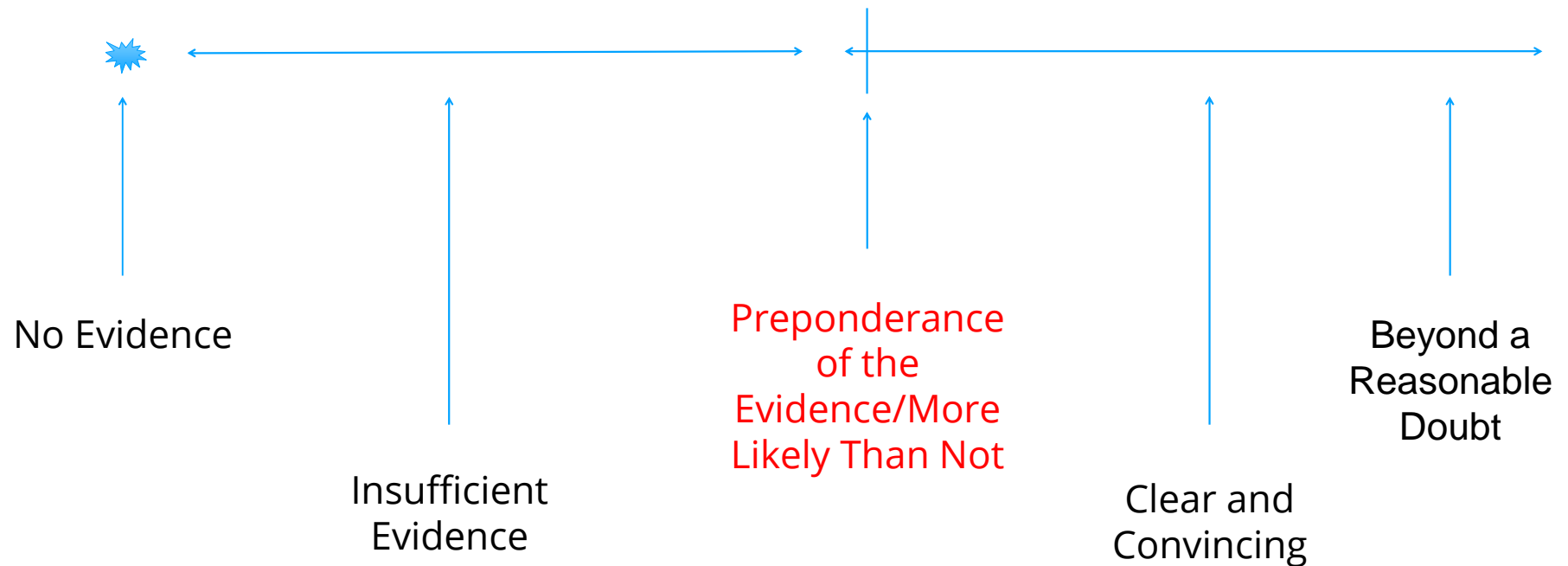
## Requirement 7: Standard of Evidence

- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility, to be used for all sexual harassment proceedings.
- Schools can choose between the preponderance of the evidence standard and the clear and convincing evidence standard.
- Whichever standard the school chooses, it has to use that standard for all formal complaints of sexual harassment, whether the respondent is a student or employee, including a faculty member.
- All sexual harassment proceedings must have the same standard of evidence.



# Evidence Thresholds

## EVIDENTIARY STANDARDS



## Requirement 8: Right to Appeal

- The grievance procedures have to contain the right to appeal the result of a grievance process, and information about how to invoke the right to appeal.
- Schools must offer an appeal to every party on certain bases, and schools also have the option to expand the bases on which an appeal may be taken, as long as they apply those bases equally to both parties.



## Appeal Rights

1. A procedural irregularity affected the outcome of the matter.
  2. New evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal.
  3. A conflict of interest on the part of a Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.
  4. Schools can offer additional grounds for appeals, if they want to, so long as the grounds apply on an equal basis to the parties.
- *D. The recommended remedies (including disciplinary sanctions/consequences) are unreasonable in light of the findings of fact (i.e. the nature and severity of the sexual harassment)*



## Requirement 9: Description of Range of Supportive Measures

- The school's grievance process must describe the range of supportive measures available to complainants and respondents.





# Supportive Measures

## Examples:

- No Contact Orders (both ways)
- Counseling
- Extensions of deadlines for assignments/tests
- Changes in classroom/lunchroom/bus assignments
- Increased Monitoring and Supervision
- Assigning a “safe” person
- Administrative Leave/Temporary Transfer



## Requirement 10: Privileges

- The school's grievance process must explain that no information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.
- Neither a party nor the school is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- Individuals can always opt to waive their own privileges, if they want, but they don't have to.



# Mandatory Dismissals

A school **must** dismiss a complaint:

- that does not describe conduct that meets the definition of sexual harassment;
  - that alleges sexual harassment that did not occur in the school's education program or activity;
  - that alleges sexual harassment that did not occur in the United States at all.
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- Schools can still address these complaints under their code of conduct, even if the misconduct is not sexual harassment under Title IX.



# Discretionary Dismissals

A school may dismiss a complaint:

- if the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
- if the respondent is no longer enrolled or employed by the school; or
- if specific circumstances prevent the school from gathering evidence sufficient to reach a determination about the allegations.



# Dismissal Procedures

- Whenever a school dismisses a formal complaint, or any allegations in it, the school has to promptly send written notice of the dismissal and the reasons to the parties.
- Both parties have the right to [appeal](#) a school's dismissal decisions.
- *Limited to determining whether appeal is timely, dismissal was appropriate or to remand back for additional investigation.*



# Appeals

- A school has to offer both parties an opportunity to appeal.
- Appeals can be taken from **two** different steps in the process.
  - After a dismissal before the grievance process, whether mandatory or discretionary.
  - At the end of the grievance process.



# Appellate Processes

- The recipient has to notify the parties in writing and implement appeal procedures equally
- Both parties must have equal opportunity to submit a written statement supporting or challenging the outcome to the Title IX Coordinator
- The person or body who decides the appeal cannot be the same person who reached the determination regarding responsibility, or the same person as the investigator or Title IX Coordinator
- After considering the parties' written statements, a written decision is issued and sent to the parties simultaneously
- The Appeals officer/body also has access to the investigation report, final determination letters and relevant evidence to review/consider.
- Determination becomes **final** after appeal decision is made



## Don't Forget About Retaliation

- No school or person is allowed to retaliate against anyone for exercising rights under Title IX.
- Any person retaliated against can file a complaint with the school and the school must have procedures in place for the prompt and equitable resolution of such complaints.
- The school should keep the identities of parties and witnesses confidential, unless disclosure of someone's identity is required under other laws or is necessary in order to conduct the grievance process.





# QUESTIONS?



# Thank You



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**Legal Disclaimer**

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